

May 28, 2021

Honorable Richard M. Berman, District Judge
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, New York, NY 10007

VIA ECF

Re: *United States v. Usher et al.*, No. 17-cr-19 (RMB)

Dear Judge Berman:

We write on behalf of our client, Richard Usher, with regard to the schedule governing his application for a modification of the Protective Order. For the reasons discussed below, we now seek an extension until September 6, 2021, for the parties to report on their specific agreements and disagreements. The United States agree to the extension.

We last updated the Court about our progress on March 26, 2021 (ECF No. 266), and before that on January 25, 2021 (ECF No. 261). Following the March 26 update, the Court established June 1, 2021 as the deadline for the parties to report on their specific agreements and disagreements. *See* March 29, 2021 Order (ECF No. 267).

We have continued to make significant progress in the OCC case since our last update. On April 15, 2021, the OCC Administrative Law Judge, Judge Jennifer Whang, issued subpoenas on Mr. Usher's behalf to ten major banks and to the Department of Justice. The ten bank subpoenas sought a narrowed set of documents. The ten subpoenaed banks subsequently negotiated conditions with Mr. Usher and produced the documents to him, and those documents are now part of the OCC case subject to the banks' conditions.

The ALJ's subpoena to the Department of Justice sought the Department's full criminal file. The Department has resisted complying with the ALJ subpoena and, as described below, Mr. Usher is litigating the issue in the U.S. District Court for the District of Columbia.

Thus, our efforts to seek the full criminal file from the Department of Justice remains unresolved and require us to seek an additional extension from this Court to September 6, 2021. By way of background, on January 14, 2021, Usher submitted a comprehensive *Touhy* request to then-Assistant Attorney General Makan Delrahim. Usher's *Touhy* request sought the complete set of documents produced by DOJ to Usher in the criminal case. In a February 9, 2021 letter from Deputy Chief Legal Advisor Sarah Oldfield, DOJ denied the *Touhy* request in its entirety. Subsequently, on March 11, 2021, Usher brought suit in the U.S. District Court for the District of Columbia, seeking declaratory and injunctive relief from DOJ's denial of the *Touhy* requests. *Usher v. U.S. Dep't of Justice et al.*, No. 21-cv-654 (D.D.C.). Usher and DOJ's Civil Division (representing the DOJ Antitrust Division) remain engaged in discussions to either resolve Mr. Usher's *Touhy* suit by agreement or to facilitate its adjudication on an expedited basis.

As with the last extension that the Court granted Mr. Usher, the instant request also is specifically designed to support our continued pursuit of the courses of action that the Court

endorsed in its December 21, 2020 Order (regarding Rohan Ramchandani). These courses of action are “issuing subpoenas to third parties,” seeking such parties’ “consent for use [of documents],” and submitting “a *Touhy* application with the Department of Justice.”


For the foregoing reasons, we ask the Court to grant the requested extension and to permit parties to report on their specific agreements and disagreements, if any remain, by September 6, 2021.

Respectfully submitted:

/s/ Michael Kendall

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| Application granted. |
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| SO ORDERED: |
| Date: <u>06/01/2021</u> |
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| Richard M. Berman, U.S.D.J. |